U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13072199

Date: JAN. 29, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a cancer researcher, seeks classification as an alien of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also determined that the Petitioner did not establish, as required, that he seeks to enter the United States to continue working in his field of claimed extraordinary ability, and that his entry into the United States will substantially benefit prospectively the United States. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a practicing clinical physician who also conducts research, focusing on cancer of the [redacted] and [redacted]. He has worked at various teaching hospitals, including [redacted] East Hospital, where he served as an associate professor and associate chief doctor, and the [redacted] Branch of [redacted] General Hospital, where he is one of three deputy directors.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). At the time of the Director's decision, the Petitioner claimed to have met five criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met the two evidentiary criteria numbered (iv) and (vi). On appeal, the Petitioner asserts that he also meets the other three claimed evidentiary criteria, and a sixth criterion, numbered (ix), relating to high salary or remuneration for services.

We will not consider this newly claimed criterion during these appeal proceedings. The Petitioner did not claim to have satisfied this criterion until he filed the appeal. The purpose of an appeal is to establish error in the decision being appealed. The regulation at 8 C.F.R. § 103.3(a)(1)(v) requires that an appellant

"identify specifically any erroneous conclusion of law or statement of fact for the appeal." Because the Petitioner had never previously claimed to have satisfied this criterion, the Director cannot have erred with respect to the criterion.

After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has met only two criteria. We discuss the other three claimed criteria below.

> Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

Documentation in the record indicates that China's Ministry of Education issued 314 "2007 Science and Technology Awards for Higher Education," including 54 "First Class" "Science and Technology Progress Awards." One of those awards, for "Basic and clinical research on [redacted]" went to 15 recipients, including the Petitioner.

The Petitioner asserts that he "was selected for this award based on rigorous selection criteria and competed against highly qualified candidates," but he submits no documentary evidence from the awarding entity to corroborate these assertions. (The Petitioner submits third-party statements purporting to describe the award selection process, but the individuals making those statements do not claim to participate in that process, nor do they cite first-hand sources for the information they provide.) He has not submitted the selection criteria, and therefore we cannot determine how rigorous they are. Also, the record does not provide any basis for comparing the Petitioner's qualifications to those of unsuccessful candidates for the award.

It is significant that the awarding entity is China's Ministry of Education, rather than a ministry primarily concerned with health or science. In 2007, the year covered by the award, the Petitioner was in his first year of postdoctoral training. The available evidence suggests, therefore, that the award is intended for students and trainees, rather than established researchers and scientists who have completed their training. The Petitioner has not established the recognition accorded to this award.

The Petitioner submits a copy of a "Certificate of Completion of Scientific and Technological Achievements" from China's Ministry of Education. The certificate indicates that the Petitioner completed a [redacted]" The Petitioner does not explain how this constitutes a prize or award, rather than what it appears to be on its face – specifically, proof that he completed a project.

The Petitioner also cites "two funding awards from the prestigious National Natural Science Foundation of China," which "grants funding to approximately 38,000 projects each year." There is no evidence that the Petitioner personally received this funding in recognition of excellence in his field. Rather, the research institution where he worked received the funds, for the purposes specified in the grant applications. The evidence submitted indicates that grant funding is determined by a given project's budget requirements, rather than excellence in the field of endeavor. These grants support ongoing or future research, rather than recognize past achievements.

The Petitioner has not established that he received nationally or internationally recognized prizes or awards for excellence in cancer research.

> Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

The Petitioner claims four original contributions of major significance. Three of these contributions relate to the use of IL-24, an interleukin protein, in the treatment of [redacted] cancer:

- He was lead researcher in a study that "provided objective evidence . . . that IL-24 can selectively destroy [redacted] cancer cells while leaving normal [redacted] cells intact";
- He led a "study of IL-24 and its synergistic effect with interferons for the treatment of [redacted] cancer"; and
- He "discovered that IL-24 increases the sensitivity of [redacted] cancer cells to chemotherapy."

The Petitioner was also "a lead researcher in a comprehensive study to demonstrate the importance of peripheral tissues in [redacted] transplant patients," and "was one of the first cancer researchers to discover that the chances of a successful [redacted] transplant are substantially higher when peripheral tissues of the [redacted] remain intact." The Petitioner asserts that he [redacted] provide objective evidence of IL-24['s] effectiveness in treating [redacted] cancer." Being the first attests to the originality of a contribution, but not necessarily to its significance. The burden is on the Petitioner to show the significance of being the first, or "one of the first," to make a particular finding.

To establish the significance of his contributions, the Petitioner relies on letters and on citations to his published work. The letters attest, in general terms, to the significance of the Petitioner's work, but they lack specific information about its impact on the field. For example, a professor at [redacted] University states that the Petitioner's "confirmation of IL-24 as a clearly-defined, selective killer of [redacted] cancer cells resulted in a surge of successful follow-up research and development in the area of IL-24 proteins and their effects on [redacted] cancer cells." The letter includes no further details about the "follow-up research and development."

The letters provide technical details about the Petitioner's research, but rely heavily on speculation about its potential future impact, rather than evidence of its known, existing impact. For instance, a professor at [redacted] Hospital in [redacted] states that the Petitioner "recognized that as IL-24 is used as a type of immunotherapy, perhaps IL-24 could be used in conjunction with chemotherapy against [redacted] cancer to create better results. . . . [The Petitioner's] continued research can significantly improve the treatment of [redacted] cancer" (emphasis added). A professor at [redacted] Hospital, where the Petitioner trained, offers the similar assertion that the Petitioner's findings "suggested that IL-24 has great potential in treating [redacted] cancer" (emphasis added).

The letters do not indicate that the Petitioner's discoveries have been widely implemented throughout the field, or, have significantly improved survival or recovery rates among [redacted] cancer patients. The Petitioner contends that citations to his published work "show that [his] research . . . [is] having a major impact on follow up studies that are paving the way to new anticancer gene therapies." The Petitioner identifies 65 articles that he published prior to the filing date, and submits printouts from Google Scholar,

the specialized search engine for scholarly publications, showing that 41 of those articles have been cited between 1 and 34 times each, for a total of 385 citations. Of the cited articles, 26 were cited fewer than ten times each. Over his total output, the average citation rate is about six citations per article.

In the denial notice, the Director acknowledged the citations of the Petitioner's work, but stated that the Petitioner had not shown that these citation figures are particularly high in comparison to those of other researchers in his field. On appeal, the Petitioner asserts that the Director did not give sufficient weight to these citations, but the Petitioner has not established that the citation rate shown in the record indicates major significance in the field.

Instead, the Petitioner identifies five citing articles as examples of "other researchers treating [the Petitioner's] work as authoritative." The Petitioner does not explain how these selected articles establish the significance of the Petitioner's work. One of these examples is a 2015 article from the World Journal of Gastroenterology, which cites 142 sources in its bibliography, and includes this passage:

[redacted] [26-29]."

The source numbered 29 is a 2013 article co-authored by the Petitioner; sources 26-28 are articles by other researchers. It is not readily evident that inclusion in this collective citation indicates that the Petitioner's article, in particular, is of major significance. Citation does not inherently establish "a major impact on follow up studies," and the Petitioner does not provide a basis for comparison to show that his research is of major significance in relation to other published research in the field.

Concerning the Petitioner's conference presentations, the Director stated that "there is no way to determine a conference paper or presentation's originality or influence in the field." On appeal, the Petitioner counters that "academic conferences exist for the very purpose of allowing researchers to present and discuss their novel and original work." We agree with the Petitioner that a conference presentation can include original work of major significance, but the burden is on the Petitioner to establish the significance of his contributions. The Petitioner's participation in such conferences is not, on its face, evidence of eligibility.

The Petitioner contends that his "conference presentations . . . tended to prove that the work was original and of major significance because, as a matter of course, invitations to conferences are given to researchers who have interesting and original findings to share." The Petitioner cites no source to support this claim, and even then, the term "interesting" does not necessarily imply major significance.[1]

The Petitioner has documented original scientific contributions, but has not established their major significance in the field.

[1] When discussing the Petitioner's characterization of his claims and evidence, the plausibility and credibility of those claims are relevant. In this respect, we note that some of the Petitioner's claims are not only unsupported, but contradicted by the materials he submitted. Seeking to explain why he does not have a profile on Google Scholar, the Petitioner contends that Google Scholar "only collects English language articles. In non-English speaking countries, the works of top researchers do not find their way onto the platform because of the language barrier." But the record shows that the Petitioner has published several English-language articles, and the Google Scholar printouts he submitted include Chinese-language results.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner did not initially claim to have satisfied this criterion. In response to a request for evidence, the Petitioner claimed to have held several qualifying roles:

- One of three deputy directors of the [redacted] Central Branch of [redacted] General Hospital;
- Associate chief doctor and associate professor at [redacted] East Hospital;
- Editorial board member of the Journal of Clinical Surgery;
- Executive chairman and speaker at the [redacted] and
- Speaker at a World Medical Network forum.

The Director concluded that the Petitioner did not establish those roles to be leading or critical. On appeal, the Petitioner discusses only his hospital positions, and thereby waives the other listed claims.

We need not reach the issue of the nature of the Petitioner's roles at the two hospitals unless the Petitioner also establishes that those institutions have distinguished reputation. Review of the record does not show that the Petitioner has met that requirement. The Petitioner submits no documentary evidence to provide an objective basis for comparison to show that the hospitals where the Petitioner has worked have distinguished reputations relative to other hospitals.

The only evidentiary exhibits that the Petitioner cites with regard to [redacted] East Hospital are a letter from that hospital's director of human resources and a translated printout from its website. Such materials, generated by the hospital itself, cannot directly establish how others perceive the institution, and a distinguished reputation is a product of outside perception rather than an organization's own self-regard or promotional endeavors.

In his response to the request for evidence, the Petitioner offered no direct evidence that the [redacted] Central Branch of [redacted] General Hospital has a distinguished reputation. Instead, the Petitioner cited the size of its staff, and stated: "A distinguished university such as the School of Medicine of [redacted] University would only affiliate with other renowned organizations and hospitals. Thus, [redacted] General Hospital's affiliation with the School of Medicine of [redacted] University demonstrates the distinguished reputation of [redacted] General Hospital." The Petitioner cited no evidence to support this conclusory assertion. It is not self-evident that university affiliation confers the university's reputation on the affiliated entity. Even then, the Petitioner's position relates to one of an unspecified number of branches of [redacted] General Hospital, rather than to that institution as a whole.

Instead, the Petitioner relies on letters from two professors at [redacted] University, both written to support the petition. [redacted] states that [redacted] General Hospital [is] a distinguished hospital with a high reputation in China," "[k]nown for its research funds, published papers, and level of expertise of its staff." [redacted] provides few details in this regard, except to name two "other hospital doctors [who] have won prestigious national awards." [redacted] states: [redacted] General Hospital is known for its strong technical knowledge and well-known experts." [redacted] provides statistics about research funding. Both professors list the hospital's collaborations with institutions outside China. The details provided do

not inherently establish a distinguished reputation, and the use of the word "distinguished" in the letters is not presumptive evidence of distinction.

The Petitioner has not submitted documentary evidence of the organizations' distinguished reputations, and therefore we need not reach the separate issue of his roles there.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Therefore, we reserve the remaining issues (relating to continued work in the field and substantial prospective benefit to the United States) because discussion of those issues cannot change the outcome of this appeal.[2]

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The Petitioner has depicted his various achievements as being consistent with the highest levels of accomplishment and influence in his field, but the evidence of record does not substantiate such a conclusion. Where he does satisfy specific evidentiary criteria, he does so through activities that are routine for his field (writing scholarly articles and performing peer review of articles by others) rather than accolades limited to, and indicative of, the highest levels in the field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

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[2] See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Nevertheless, we briefly note that, while the Petitioner asserts that he intends "to work as a medical researcher at a cancer research lab in California or Texas," he has not established that any research institution in either of those states has, even informally, expressed any interest in employing him, or that freelance research independent of such institutions is a viable or plausible avenue. 8 C.F.R. § 204.5(h)(5) calls for "detail[ed] plans," rather than a general assertion of intent.